

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

STRUCTURAL SYSTEMS
TECHNOLOGY, INC.,

Plaintiff,

v.

NATIONAL FIRE & MARINE INSURANCE
COMPANY; GREAT AMERICAN E & S
INSURANCE COMPANY; UNDERWRITERS
AT LLOYD'S, LONDON; ZURICH
AMERICAN INSURANCE COMPANY and
DUHAMEL BROADCASTING ENTERPRISES,

Defendants.

CASE NO.: 8:04CV194

**RESPONSE OF STRUCTURAL
SYSTEMS TECHNOLOGY, INC.
TO GREAT AMERICAN E & S
INSURANCE COMPANY'S
MOTION FOR PARTIAL
SUMMARY JUDGMENT
AGAINST STRUCTURAL
SYSTEMS TECHNOLOGY, INC.**

Structural Systems Technology, Inc. ("SST"), Plaintiff, hereby responds to the Motion for Partial Summary Judgment filed against it by the Defendant Great American E & S Insurance Company ("Great American"), and states, in this context, that in the absence of a ruling in the underlying action, Duhamel Broadcasting Enterprises v. Structural Systems Technology, Inc., Case 8:03CV47, and in the absence of any finding of liability on the part of the Defendants, or of any discovery in the present action, the issues presented by Great American in its Motion for Summary Judgment are not ripe for disposition at this time. In this respect, Great American has presented the facts set forth in the Complaint filed in the underlying action (Exhibit B to the Affidavit of Michele E. Young filed in support of the Motion) as setting forth undisputed facts, while the facts and contentions set forth in the Complaint are still in dispute, as the underlying action has neither been tried nor taken to judgment. Furthermore, this declaratory judgment action is in such an early stage of the proceedings that SST requests an opportunity to undertake further discovery in this matter, pursuant to Rule 56 (f), Federal Rules of Civil Procedure, before the Court rules on Great American's Motion for Partial Summary Judgment.

In support of its position in this matter, SST submits the attached Brief in Opposition to Great American E & S Insurance Company's Motion for Partial Summary Judgment against Structural Systems Technology, Inc.

Pursuant to N.E.L.R. 7.1 (e), Plaintiff respectfully requests oral argument in this matter.

Dated this 30th day of June, 2004.

Respectfully submitted,

STRUCTURAL SYSTEMS TECHNOLOGY, INC.,
Defendant.

BY /s/ Angus R. Everton

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of June, 2004, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

Richard P. Jeffries, Esquire

Patrick W. Kennison, Esquire

John R. Douglas, Esquire

William R. Johnson, Esquire

William M. Lamson, Esquire

Nancy F. Peters, Esquire

Richard W. Ratz, Esquire

Michele E. Young, Esquire

/s/ Ronald E. Temple